

House File 2450 - Reprinted

HOUSE FILE 2450
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HSB 581)

(As Amended and Passed by the House March 7, 2018)

A BILL FOR

1 An Act relating to DNA profiling of certain criminal offenders.
2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 81.1, Code 2018, is amended to read as
2 follows:

3 **81.1 Definitions.**

4 As used in [this chapter](#), unless the context otherwise
5 requires:

6 1. "*Aggravated misdemeanor*" means an offense classified as
7 an aggravated misdemeanor committed by a person eighteen years
8 of age or older on or after July 1, 2014, other than any of the
9 following offenses:

10 a. A violation of [chapter 321](#).

11 b. A second offense violation of [section 321J.2](#), unless
12 the person has more than one previous revocation as determined
13 pursuant to [section 321J.2](#), subsection 8, within the
14 twelve-year period immediately preceding the commission of the
15 offense in question.

16 c. A violation of [chapter 716B](#).

17 d. A violation of [chapter 717A](#).

18 e. A violation of [section 725.7](#).

19 2. "*Combined DNA index system*" means a national, searchable
20 DNA database created and maintained by the federal bureau of
21 investigation where DNA profiles are stored and searched at a
22 local, state, or national level.

23 ~~2.~~ 3. "*DNA*" means deoxyribonucleic acid.

24 ~~3.~~ 4. "*DNA data bank*" means the repository for DNA samples
25 obtained pursuant to [section 81.4](#).

26 ~~4.~~ 5. "*DNA database*" means the collection of DNA profiles
27 and DNA records.

28 ~~5.~~ 6. "*DNA profile*" means the objective form of the results
29 of DNA analysis performed on a DNA sample. The results of
30 all DNA identification analysis on an individual's DNA sample
31 are also collectively referred to as the DNA profile of an
32 individual. "*DNA profile*" also means the objective form of
33 the results of DNA analysis performed on a forensic sample, to
34 the extent that sufficient biological material is present to
35 develop a valid DNA profile.

1 ~~6.~~ 7. *"DNA profiling"* means the procedure established by
2 the division of criminal investigation, department of public
3 safety, for determining a person's genetic identity.

4 ~~7.~~ 8. *"DNA record"* means the DNA sample and DNA profile,
5 and other records in the DNA database and DNA data bank used to
6 identify a person.

7 ~~8.~~ 9. *"DNA sample"* means a biological sample provided by
8 any person required to submit a DNA sample or a DNA sample
9 submitted for any other purpose under [section 81.4](#).

10 10. *"DNA testing"* means a test to analyze physical and
11 biological evidence from a DNA sample including analysis
12 that might not result in the establishment of a complete DNA
13 profile.

14 11. *"Forensic sample"* means an evidentiary item that may
15 contain DNA relevant to a crime.

16 12. *"Keyboard search"* means a manual keyboard search
17 conducted in accordance with the current version of the
18 national DNA index system operational procedures manual.

19 ~~9.~~ 13. *"Person required to submit a DNA sample"* means a
20 person convicted, adjudicated delinquent, receiving a deferred
21 judgment, or found not guilty by reason of insanity of an
22 offense requiring DNA profiling pursuant to [section 81.2](#).
23 *"Person required to submit a DNA sample"* also means a person
24 determined to be a sexually violent predator pursuant to
25 section 229A.7.

26 Sec. 2. Section 81.10, Code 2018, is amended to read as
27 follows:

28 **81.10 DNA profiling after conviction.**

29 1. A defendant who has been convicted of a felony or
30 aggravated misdemeanor ~~and who has not been required to~~
31 ~~submit a DNA sample for DNA profiling~~ may make a motion to the
32 court for an order to require that DNA ~~analysis~~ profiling be
33 performed on ~~evidence~~ a forensic sample collected in the case
34 for which the person stands convicted.

35 2. The motion shall state the following:

1 *a.* The specific crimes for which the defendant stands
2 convicted in this case.

3 *b.* The facts of the underlying case, as proven at trial or
4 admitted to during a guilty plea proceeding.

5 *c.* Whether any of the charges include sexual abuse or
6 involve sexual assault, and if so, whether a sexual assault
7 examination was conducted and evidence forensic samples were
8 preserved, if known.

9 *d.* Whether identity was at issue or contested by the
10 defendant.

11 *e.* Whether the defendant offered an alibi, and if so,
12 testimony corroborating the alibi and, from whom.

13 *f.* Whether eyewitness testimony was offered, and if so from
14 whom.

15 *g.* Whether any issues of police or prosecutor misconduct
16 have been raised in the past or are being raised by the motion.

17 *h.* The type of inculpatory evidence admitted into evidence
18 at trial or admitted to during a guilty plea proceeding.

19 *i.* Whether blood testing or other biological evidence
20 testing was conducted previously in connection with the case
21 and, if so, by whom and the result, if known.

22 *j.* What biological evidence exists and, if known, the agency
23 or laboratory storing the evidence forensic sample that the
24 defendant seeks to have tested.

25 *k.* Why the requested analysis of DNA evidence a forensic
26 sample is material to the issue in the case and not merely
27 cumulative or impeaching.

28 *l.* Why the DNA evidence results would have changed the
29 outcome of the trial or invalidated a guilty plea if the
30 requested DNA profiling had been conducted prior to the
31 conviction.

32 3. ~~A motion filed under this section shall be filed in~~
33 ~~the county where the defendant was convicted, and notice~~
34 ~~of the motion shall be served by certified mail upon the~~
35 ~~county attorney and, if known, upon the state, local agency,~~

1 ~~or laboratory holding evidence described in subsection 2,~~
 2 ~~paragraph "k". The county attorney shall have sixty days to~~
 3 ~~file an answer to the motion. The motion shall be heard in,~~
 4 ~~and before any judge of the court in which the defendant's~~
 5 ~~conviction or sentence took place. A record of the proceedings~~
 6 ~~shall be made and preserved. All rules and statutes applicable~~
 7 ~~in civil proceedings including pretrial and discovery~~
 8 ~~procedures shall be available to the parties. The court may~~
 9 ~~receive proof of affidavits, depositions, oral testimony, or~~
 10 ~~other evidence, and may order the defendant brought before it~~
 11 ~~for the hearing on the motion.~~

12 4. Any Subject to section 81.8, any DNA profiling of the
 13 defendant, an unknown person, or other biological evidence
 14 testing conducted by the state or by the defendant shall be
 15 disclosed and the results of such DNA profiling or other
 16 testing described in the motion or answer.

17 5. If the evidence forensic sample requested to be tested
 18 was previously subjected to DNA or other biological analysis
 19 by either party, the court may order the disclosure of the
 20 results of such testing, including laboratory reports, notes,
 21 and underlying data, to the court and the parties.

22 6. The court may order a hearing on the motion to determine
 23 if evidence the forensic sample should be subjected to DNA
 24 analysis profiling.

25 7. The court shall grant the motion if all of the following
 26 apply:

27 a. The evidence forensic sample subject to DNA ~~testing~~
 28 profiling is available and ~~in a condition that will permit~~
 29 ~~analysis.~~ any of the following apply:

30 (1) DNA profiling has not been performed on the forensic
 31 sample.

32 (2) DNA profiling has been previously performed on
 33 the forensic sample and the defendant is requesting DNA
 34 profiling using a new method or technology approved by the
 35 accrediting organization and authorized by the federal bureau

1 of investigation for DNA profiling that is substantially more
2 probative than the DNA profiling previously performed.

3 b. A sufficient chain of custody has been established for
4 the evidence forensic sample.

5 c. The identity of the person who committed the crime for
6 which the defendant was convicted was a significant issue in
7 the crime for which the defendant was convicted.

8 d. The evidence forensic sample subject to DNA analysis
9 profiling is material to, and not merely cumulative or
10 impeaching of, evidence included in the trial record or
11 admitted to at a guilty plea proceeding.

12 e. ~~DNA analysis of the evidence~~ The DNA profiling results
13 would raise a reasonable probability that the defendant would
14 not have been convicted if ~~DNA profiling had been available at~~
15 ~~the time of the conviction and had been conducted prior to the~~
16 ~~conviction~~ such results had been introduced at trial.

17 8. a. Upon the court granting a motion filed pursuant to
18 this section, DNA ~~analysis~~ profiling of evidence a forensic
19 sample shall be conducted within the guidelines generally
20 accepted by the scientific community. The defendant shall
21 provide DNA samples for testing if requested by the state.

22 b. In response to a motion filed pursuant to this
23 section, and after proper notice to the parties, including
24 the department of public safety or other entity authorized
25 to perform the search, the court may enter an order that
26 authorizes the department of public safety or other entity to
27 access the DNA database and do any of the following:

28 (1) Compare a DNA profile obtained from a DNA sample or
29 forensic sample collected in connection with an investigation
30 or prosecution of the defendant against the DNA database
31 through the use of a keyboard search.

32 (2) Utilize a search method similar to a keyboard search
33 that does not involve uploading the DNA profile to the DNA
34 database if the court determines all of the following apply:

35 (a) The DNA profile complies with federal bureau of

1 investigation requirements or state requirements, whichever are
2 applicable, as such requirements are applied to law enforcement
3 agencies seeking such a comparison, and the database meets
4 national DNA index system or state DNA index system criteria,
5 whichever is applicable.

6 (b) If a comparison of the DNA profile had been conducted
7 and if the results had been admitted at trial resulting in
8 a verdict of guilty, a reasonable probability exists that
9 the verdict would have been more favorable to the defendant,
10 or in a case involving a plea of guilty, if the results had
11 been available to the defendant prior to the guilty plea, a
12 reasonable probability exists that a conviction would not have
13 resulted.

14 9. Results of DNA analysis profiling conducted pursuant
15 to this section shall be reported to the parties and to the
16 court and may be provided to the board of parole, department
17 of corrections, and criminal and juvenile justice agencies,
18 as defined in section 692.1, for use in the course of
19 investigations and prosecutions, and for consideration in
20 connection with requests for parole, pardon, reprieve, and
21 commutation. DNA samples obtained pursuant to this section
22 may be included in the DNA data bank, and DNA profiles and DNA
23 records developed pursuant to this section may be included in
24 the DNA database.

25 10. A criminal or juvenile justice agency, as defined in
26 section 692.1, shall maintain DNA samples and evidence forensic
27 samples that could be tested for DNA for a period of three
28 years beyond the limitations for the commencement of criminal
29 actions as set forth in chapter 802. This section does not
30 create a cause of action for damages or a presumption of
31 spoliation in the event evidence a forensic sample is no longer
32 available for testing.

33 11. If the court determines a defendant who files a motion
34 under this section is indigent, the defendant shall be entitled
35 to appointment of counsel as provided in chapter 815.

1 12. If the court determines after DNA ~~analysis~~ profiling
2 ordered pursuant to this section that the results indicate
3 conclusively that the DNA profile of the defendant matches the
4 profile from the analyzed evidence used against the defendant,
5 the court may order the defendant to pay the costs of these
6 proceedings, including costs of all testing, court costs, and
7 costs of court-appointed counsel, if any.

8 13. If the court determines after DNA profiling ordered
9 pursuant to this section that the results indicate a reasonable
10 probability that the defendant would not have been convicted
11 if such DNA profiling results had been introduced at trial,
12 the court shall enter an appropriate order with respect to
13 the defendant's conviction or sentence in the former criminal
14 proceedings, and any supplementary orders as to rearraignment,
15 retrial, custody, bail, discharge, correction of sentence, or
16 other matters that may be necessary and proper. The court
17 shall make specific findings of fact, and state expressly its
18 conclusions of law, relating to each issue presented. This
19 order shall be considered a final judgment.

20 Sec. 3. NEW SECTION. **81.11 Compliance with applicable laws.**

21 A court shall not enter an order under this chapter that
22 would result in a violation of state or federal law or loss of
23 access to a federal system or database.